IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal No. 560 of 2001 (658 of 1992)

State of Uttar Pradesh
(now State of Uttaranchal) ……..… Appellant

Versus

Sri Lekhi Ram Semalti
S/o Sri Vidya Dutt Semalti
R/o Ward No. 2, Purana Danbar,
Tehri, District Tehri Garhwal ……. Respondent

……

Coram: Hon. P.C. Verma,J.
Hon. B.S. Verma, J.
August 09, 2004.

(Per Hon. P.C.Verma, J.)

1. This is an appeal filed by the State praying for setting aside the judgment and decree dated 1.8.1992 passed by the District Judge, Tehri Garhwal in Land Acquisition Reference No. 4 of 1986, Lakhi Ram Semalty Vs. State of U.P. and to affirm the award dated 28.2.1985 given by the Special Land Acquisition Officer (Irrigation), Tehri Garhwal, Tehri.

2. The brief facts giving rise to the present appeal are that the land alongwith pucca construction of the claimant was acquired for the purpose of construction of the Tehri Dam as the entire Tehri town was expected to submerge into water. Notification under section 4 (1) of the Land Acquisition Act was published on 22.1.1983. Thereafter notification under section 6 of the Act was issued on 8.10.1983. Since the house of the respondent/claimant, was also acquired, he was awarded compensation of Rs. 5160/-for the land measuring 860 sq. ft. @ Rs..6/- per sq. ft, by the Special Land Acquisition Officer. In

addition to this amount, a sum of Rs. 1,11,035/- besides 30% solatium amounting to Rs. 1542/- and 12% additional compensation amounting to Rs. 1253.67 was also awarded on the cost of the land. Similarly, 30% solatium on the cost of house (Rs. 33,310.50) and 12 % additional compensation amount to Rs. 26,976.94 was also awarded. The S.L.A.O. has also awarded Rs. 83.20 as compensation for cost of trees existing on the adjoining land of the house. Thus, in total he awarded Rs.1,79,367.31 as compensation to the claimant vide his Award dated 23.02.1985.

3. Aggrieved by the Award of the Special Land Acquisition Officer, a reference was preferred under section 18 of the Land Acquisition Act before the District Judge. Tehri Garhwal being Land Acquisition Reference No. 4 of 1986.

4. Before the District Judge, the claimant/respondent had claimed that he had purchased a piece of land 43' X 26' measuring 1118 sq.ft. from the erstwhile Maharaja of Tehri Garhwal State through registered sale deed dated 21.12.1970. Besides this, he had also purchased the adjoining piece of land measuring 480 sq. ft. which was lying *banjar* from the Maharaja and had made kitchen-garden thereon in which four guava trees, one Tun Tree, two *Shahtoot* trees, and four trees of Dainkan and other trees were standing. The case of the claimant was that he was not awarded compensation for drain, kitchen, garden, boundary wall, professional loss etc. Thus, he claimed a sum of Rs. 10,26,000/- as compensation after deducting the amount of Rs. 1,79,367.30 which was already awarded to him by the opposite party (appellant herein). The State Government contested the case of the claimant (respondent herein) and

pleaded that compensation awarded was adequate and therefore, the claimant was not entitled to any further relief and his reference is liable to be dismissed.

5. On the pleadings of the parties the District Judge framed necessary issues and found that the Award was erroneous. He held that besides land of about 1118 sq. ft, which was purchased by the claimant (respondent herein) vide sale deed dated 21.12.1970, in which the claimant has constructed a pucca house, he was also entitled for compensation for the 480 sq. ft. land which he had purchased orally from the Maharaja of Tehri as it was undisputed that the claimant had been in possession of this land since 1974-75 and had planted various trees thereon. He also observed that erstwhile Maharaja of Tehri Garhwal was owner of that land and he had not claimed any compensation in that regard. The claimant even if illegally purchased this piece of land was in continuous occupation of this land, therefore, for the purpose of compensation, he should be deemed owner of the aforesaid land. He also observed that curiously enough, the claimant has been awarded Rs. 83.20 as compensation for the trees existing over this land but was denied compensation for the land. Therefore, he found the award to be erroneous.

7. With regard to the rate of the land, the District Judge found that the amount of Rs. 6/- per sq. ft. was inadequate as the house and the adjoining land was located in the populated area of Tehri town i.e. in ward no. 2. He observed that ignoring everything, if one is said to assess value of the land in such an area, then in common experience the value of the land of the claimant, could never have been so less as Rs. 6/- per sq. ft. He relied upon the copies of the sale deed dated 16.01.1985, 15.01.1985 and

16.1.1989 executed by one Sri Vajaipal Singh, which filed by the claimant. He observed that though the sale deeds were of 1985, the land was sold at the rate of Rs. 30/- per sq. ft. He also observed that subsequently, the inhabitants of ward no. 7 to 10, whose land was 50 meters away from the acquired land, were awarded compensation at the rate of Rs. 30/- per sq. ft. According to the District Judge, as it is known to everyone that the Tehri town will submerge in water, therefore, there could not have been any increase in the rate of land since 1983, when the land of the claimant was acquired. Thus, the learned District Judge held that in view of the reported decision Mehta Ravendra Rai Ajit Rai and others Vs. State of Gujrat (AIR 1989 SC 2051), the agreement of sale 5 months after notification under section 4 could not be ignored, and the said case law is applicable in to the facts of this case. In view of this, he assessed the rate of land @ Rs. 30/- per sq. ft.

8. We have heard learned counsel for the parties and have carefully examined the record of the case.

9. From the facts and evidence on record, it is clear that the land of the claimant-respondent was acquired for the purpose of Tehri dam. The total area which was acquired by the Government vide notification dated 22.1.1983 u/s 4 of the Act was 860 sq. ft. Therefore the findings of the District Judge that the claimant was entitled for compensation for 1598 sq. ft is erroneous as the compensation can only be given for the acquired area i.e. 860 sq. ft. for which notification under sections 4 and 6 of the Land Acquisition Act were issued. Considering the facts and circumstances of the case, we are of the opinion that claimant-respondent was entitled to compensation for the

said area of 860 sq. ft. and the amount he had spent for the development of the same. Thus, the claimant-respondent is entitled to a sum of Rs. 25, 800- as compensation for the aforementioned land of 860 sq. ft. @ Rs. 30/- per sq. ft.

9. So far as the finding of the District Judge with regard to the compensation for constructed portion is concerned, we find that he had recorded the evidence of Mr. Bhim Singh Negi, P.W.3, who was an approved Architect, who has valued the house of the claimant to be of Rs. 2,49,039/-, and D.W.2 Ramesh Chand Bindal, who had admitted the existence of 11 rooms including kitchen, latrine, bath rooms, verandah and a garage on the ground floor of the claimant's house. After considering their evidence and keeping in view in mind that in the hilly tracks the charge of construction are more as no big vehicles could approach upto site and the materials for the construction of the house had to be carried by mules making the cost of construction of a house much higher, the District Judge has found that the value of the construction could not be less than Rs. 2,00,000/-. Therefore, the District Judge has found that the assessment of that house at Rs. 1,11,035/- was inadequate and he awarded a sum of Rs. 2,00,000/- on this score. We do not find any infirmity in the finding of the learned District Judge on this count.

10. The finding of the District Judge that the claimant is entitled for compensation of Rs. 2000/- on account of construction of pucca drain for flow of dirty water measuring 1½ ft. X 1½ ft. upto 50 ft. does not call for any interference and is just and proper. He has also rightly awarded a sum Rs. 5000/- for two septic tanks construction by the claimant. The District

Judge has also rightly awarded a sum of Rs. 10,000/- to the claimant for expenses in shifting of his family and other belonging to a new place. The finding of the District Judge that the claimant is entitled to Rs. 4000/- as cost of trees and Rs. 5000/- towards electric and water connection fittings also does not call for any interference.

11. In view of the above, the claimant-respondent is entitled to a sum of Rs. 2,51,800/- as compensation. In addition of this amount, he will also be entitled to the following claims:

(a) 30% solatium w.e.f. 21.1.1983 till the date of award i.e. 31.1.1985.

(b) Special compensation @ 12% on the amount of Rs.2,51,800/- for the aforesaid period.

(c) Rs. 10,000/- shifting expenses.

After calculation the aforesaid amount, a sum of Rs.1,79,367/- which has already been received by the claimant-respondent will also be deducted. The appeal stands partly allowed.

Subject to above, the order of the District Judge dated 1.8.1992 is affirmed.

(B.S.Verma, J.) **(P.C.Verma, J.)**

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